

Appl. No. : 10/642,445
Filed : August 15, 2003

REMARKS

Claims 32-51 and 58-78 stand rejected. Applicant has amended Claims 32, 37, 44, 49, 60, 66, 67, and 68. Thus, Claims 32-51 and 58-78 are pending in the application and are presented for reconsideration and further examination in view of the amendments and the following remarks.

Interview Summary

Applicant would like to thank the Examiner for taking the time to meet and discuss the outstanding Office Action in a personal interview with counsel for Applicant on March 8, 2005. During the interview, proposed amendments to the claims were discussed. In regard to Claim 32, Applicant's counsel proposed an amendment to define further that the support is located so as to "prevent contact between the medical article and a patient's skin when the retainer is placed upon the patient's skin." Similar language was proposed for amendments to Claims 44, 49, 60 and it was noted that similar language already existed in Claim 58.

The Examiner agreed that the proposed Claims 32, 44, 49, 60, and the pending language of Claim 58 define subject matter that is patentable over the applied art, namely the Swauger reference. A detailed discussion of the patentability of these claims over the cited prior art is presented below.

The Specification Has Been Amended

The specification was objected to for not explicitly stating, with reference to the terms and phrases of the claim element, what structure performs the function recited in the claim element. Amended Claim 44 includes means-plus-function language and, in particular, "means for preventing contact between the medical article and a patient's skin." Applicant has amended the specification to overcome this objection. More specifically, paragraph [0080] of the specification has been amended in accordance with the Examiner's suggestion. Applicant notes that the rejection to the specification is premised solely upon 37 C.F.R. § 1.75(d) and not 35 U.S.C. § 112. In view of the proposed amendment to the specification, Applicant submits that this objection is overcome.

Claim Rejections under 35 U.S.C. § 112, second paragraph

Claims 37-39 and 66-68 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claims 37 and 66-68 to

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define further the recited limitations. Accordingly, Applicant respectfully submits that all pending claims fully comply with 35 U.S.C. § 112.

Rejection under §35 U.S.C. §102(b) over Swauger (U.S. Patent No.5,413,562)

The Examiner rejected independent Claims 32, 44, 49, 58, and 60 as anticipated by U.S. Patent No. 5,413,562 to Swauger. In regard to Claims 32, 44, 49, and 60, Applicant respectfully submits that the amendments to these claims further distinguish the recited retainer from the applied art; however, Applicant does not acquiesce to the grounds for the rejections and preserves the right to pursue the original claim language in a continuation application. In regard to Claim 58, Applicant respectfully traverses the grounds for the rejection.

Amended Claim 32 is directed to a retainer that includes, among other elements, "at least one support having a lower surface disposed on the underside of the retainer and to a side of the access opening opposite the channel axis and located so as to prevent contact between the medical article and a patient's skin when the retainer is placed upon the patient's skin." (emphasis added). Claims 44, 49, 60 have been amended along similar lines: Claim 44 now recites, among limitations, means for preventing contact between the medical article and the patient's skin; Claim 49 states that the channel is located so as to prevent contact between the medical article and the patient skin; and Claim 60 recites that the support surface is arranged below the channel to prevent contact between the medical article and the patient's skin. The original language of Claim 58 recited that a distance between the support and the axis of the channel prevents contact between the medical article and the patient's skin. As the Examiner agreed during the interview, the applied art fails to disclose such structure.

U.S. Patent No. 5,413,562 to Swauger discloses a stabilizing fitting for securing a syringe body adjacent to a venipuncture site. As discussed during the interview, the syringe body in Swauger "is forcibly urged against the skin of the patient's limb, and therefore, held in place" by the stabilizing fitting (col. 4, lines 14-16). Thus, the applied art fails to disclose, *inter alia*, the claimed structure of each claim referenced above. Applicant respectfully requests reconsideration of amended independent Claims 32, 44, 49, and 60, and pending independent Claim 58. Dependent Claims 33-43, 45-48, 50-51, 59, and 61-78 each depend from one of independent Claims 32, 44, 49, or 58, and thus is patentable for at least the same reasons that support the allowance of the claim from which it depends.

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the objections and rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the noted rejections and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if an issue requires clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve any such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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